fires in the past have not only consumed the scrub oak, they have consumed, in some instances, hundreds of beautiful and very expensive homes that are within those areas. This year, it is interesting that, of the thousands of acres that were burned, only one home was burned.

In talking to the firefighters, why were they able to control the fires in a better way and why were fewer homes lost, they said very clearly, because it was the thinning and the cleaning of the brush and undergrowth that was allowed by the categorical exclusions of the Healthy Forest Act. In other words, the fuel buildup that naturally occurs on public lands, and in this instance in urban watersheds in which the Healthy Forest Act is more specific, categorical exclusions were granted. In other words, the scoping process of the Forest Service to determine the impact that the action of cleaning and thinning would have on public lands was determined not to be of major environmental consequence, and therefore the Forest Service was allowed to proceed.

Along comes a judge just this summer and says: no no, you have to do an EA, you have to do an EIS, on all, including those provisions the Congress spoke specifically to as it related to categorical exclusions. In other words, within the category an exclusion is allowed for certain actions on forested public lands for the purpose of sustaining the quality of the watershed and the health of the forest, and so on and so forth.

What is clearly a loss now is that the Forest Service, in planning for next year's actions on the ground—the thinning and the cleaning of our forests to ensure forest health, to bring down the overall threat of fire—has been dramatically diminished by this judge's action.

We had hoped in the supplemental to gain the language necessary to reinstate the categorical exclusions, as was and as has been clearly debated as the intent of Congress. That has been denied. So when Congress reconvenes in January and early February, we are going to have to work overtime to make sure that we get this law into place.

What does it mean? It means protecting watersheds. It means protecting homes that have been built up against the forested lands, doing the right kinds of actions which result in the cleaning up of our forests and the ensuring of the vitality of the environment within.

What the judge's action means in essence is that you have to spend tens of millions of dollars perfecting an EA—or in this instance a full environmental impact statement—to be able to proceed. We believe that under certain circumstances where the health of the forest is critical, and in this instance the Los Angeles Basin, where we saw the action of being able to control fires because the overall fuel load on our public lands was dramatically reduced by the thinning and the cleaning in that region of the country—without that we simply will not be able to move forward as expeditiously as the Healthy Forest Act intended that we move. That is what is at issue here. I had hoped we would gain that. We have not gained that in the DOD appropriations and supplemental language that was applied.

Federal lands recovery work that is going on in Mississippi and Louisiana and Texas, work that was caused by the hurricanes Katrina and Rita, is now included in this problem. So are, overall, 800 planned, categorically excluded low-impact projects and hazardous fuel reduction projects affecting over 234 communities and 200 currently planned, prescribed burning projects that, if delayed, would more than likely put them beyond optimum and safe burning conditions, delayed because of the action of the judge and therefore pushed off for another year.

That is the critical nature of this issue and why I have come to the Chamber. As one of the chief cosponsors of the 1993 Appeals Reform Act, I know we had no expectation or belief that categorical exclusions placed in 1993 would be subject to the Appeals Reform Act. It is important that we move forward to clarify this language.

I understand some on this floor today think otherwise.

Perhaps it would be wise to review the amount of public participation involved in the development of the Categorical Exclusions regulations that both the Clinton administration and then the Bush administration have developed since the Appeals Reform Act was first passed in 1993.

In the mid-1990s, the Clinton administration proposed significant changes to the Categorical Exclusions. They did this through an Administrative Procedures Act—APA—rulemaking process which included both a proposed and final rulemaking, including extensive review of numerous public comments.

Those categorical exclusions withstood a number of legal challenges and remained in place until 2003.

In 2000, the Bush administration undertook extensive analysis of thousands of projects to develop a series of new categorical exclusion proposals.

After review of literally thousands of projects the Bush administration proposed a number of changes to the Clinton administration's categorical exclusions. They did this through an APA rulemaking that again included extensive public comments.

I think it is important that my fellow Senators understand that the original Heartwood II settlement agreement, which attempted to nullify categorical exclusions, was rejected by the District Court in which it was brought and the case was dismissed.

Now, the Eastern District Court of California has chosen to resurrect that settlement agreement and impose it nationally.

I know that some people in the Chamber today may still be concerned that the land managers may miss something and not realize there could be a potential problem.

Between the scoping that is required, the extraordinary assessment that is required, and the public notice requirements that will be required if this language is maintained, it is inconceivable to me that projects that might be environmentally detrimental could be carried out through the categorical exclusion process.

This body should reject the efforts of the ''gum up the works'' crowd who want more process to slow down more projects.

The current categorical exclusions are based on more data and analysis than anytime in history.

We have more protections to ensure they are not misused than anytime in history, and we will have more public notice on categorical exclusions than anytime in history if we adopt the language in this bill.

I hope this Congress sees fit to address this situation before it is too late. We thought we could. We will have to return early next year to get that kind of work done.

What is at stake now is the health of the forest, the health of the watershed, and literally hundreds of thousands of homes spread across the landscape that are about or near public forest, public lands, that could find themselves in a condition that would jeopardize their presence by fire, which could ensure where fuel-laden lands exist.

I thought it was important that I submit that for the RECORD because it is critically important that we move forward on that issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

THE PATRIOT ACT

Mr. DAYTON. Mr. President, last Saturday, President Bush castigated those of us who voted against cloture on the PATRIOT Act. He said:

> That decision is irresponsible and it endangers the lives of our citizens.

That is a mistaken characterization. Every Senator supported the Senate's reauthorization of the PATRIOT Act last July when it passed the Senate unanimously.

Last Friday, 47 of us said the House-Senate conference report is not yet good enough. Before we make the PATRIOT Act permanent, we must make it right.

The PATRIOT Act that we passed 4 years ago, which I supported, gave the Federal Government unprecedented powers to conduct surveillance on American citizens and demand information about their private activities, about their personal lives. We passed the PATRIOT Act hastily in the Senate 4 years ago, too hastily in retrospect. We passed it when my caucus was in the majority. So we, and I, were

responsible for that haste. It seemed necessary in the immediate aftermath of 9/11.

One important consideration for this Senator, then, when we voted for the PATRIOT Act was that it would sunset in 4 years, and this Congress would take the time to review it carefully and modify it as necessary to assure the proper balance between combating terrorism and protecting the privacy of innocent Americans.

As I said 5 months ago, the Senate passed unanimously our reauthorization of the PATRIOT Act with important changes to protect constitutional rights of innocent American citizens.

The House passed its version of the new PATRIOT Act in July, also, allowing plenty of time for the House-Senate conference committee to resolve their differences in the best interests of all Americans. But the House did not appoint conferees until last month. The House leaders chose to engage in this take-it-or-leave-it brinksmanship to try to force the Senate to accept their permanent invasion of the private lives of innocent Americans.

Last Friday, 47 Senators—5 Republicans, 41 Democrats, and 1 independent—said: No, we will not accept this version of the PATRIOT Act. We do not oppose the PATRIOT Act, as the President and others have falsely charged. Most of us voted for the original law 4 years ago, and all of us in this Senate voted for the new one last July. Many of us, myself included, have proposed extending the existing law for another 3 months to give conferees time to resolve our remaining differences to design a permanent PATRIOT Act that most of us can support.

What we haven't said is there is more brinkmanship with the President and the Senate leader threatening to let the existing law expire so they can blame 47 of us for supposedly weakening the protections of the American people.

Let us be very clear. Let the American people be very clear. If the PATRIOT Act is allowed to expire, that is the choice and the responsibility of the President and the Senate majority leadership.

Today is December 19. The Senate is still in session with 12 more days until the year's end. That is enough time either to revise the conference report so that it has broad bipartisan support in the Senate or to extend the existing law.

All of us, every Member of this Senate, supported the Senate version of the new law that passed unanimously 5 months ago. It is absurd and wrong for detractors to claim that we do not support it now when we just disagree with a few but a very important few features in it.

Last Saturday, President Bush also reasserted his right to do whatever he deems necessary to protect the American people from terrorist attacks. That is an enormous responsibility, one that Congress shares with him. However, we differ in our approaches.

The President's legal counsel has opined that he has the constitutional authority as Commander in Chief and the legal authority from Congress post-9/11 to override or ignore any laws or limitations that he decides necessary to combat terrorism.

Whether Congress intended ''any and all force necessary'' to include that authority is highly questionable. But that is the President's operating assumption.

If the President can do whatever he wants, whether it is legal or not, and his decision to do it makes it legal, then in a sense the PATRIOT Act is not even necessary because the President can order it all done anyway.

In another sense, however, our getting the PATRIOT Act right becomes even more imperative because we are a nation of laws, laws which must be followed by everyone—even the President, even the FBI, even the National Security Agency, during good times and bad, during war and peace, because our existence as a nation, as a constitutional democracy requires it and depends upon it.

No external threat to our way of life could be so great as the danger that our rule of law not be obeyed by our most powerful institutions and individuals.

This Senate exists to make those laws. Every one of us—all 100 of us—takes that responsibility most seriously because we assume that our laws matter, that they will be honored and obeyed, or that they will be enforced so that they will define the legal courses of action that everyone in this country must follow. Otherwise, we are irrelevant and laws that we enact are meaningless.

Our operating assumption, however, continues to be that our laws will be obeyed, and, thus, our efforts in the Senate do matter. That is why we want and we deserve the time necessary to get our laws right. That is the way our process is supposed to work. All 41 or more Senators to hold up legislation in order to get it right is the way our process is supposed to work.

It is strange, to say the least, that those who assert their right to ignore our rules and our laws are vilifying us in this Senate for following them.

For people watching us today who may be unfamiliar with the details of the existing PATRIOT Act, let me give you an example of what it is that we are trying to correct.

According to the Washington Post, last year, under the PATRIOT Act, some 56 FBI field agents signed over 30,000 national security letters. That is 100 times more than before the act. They were not directed toward possible terrorists but, rather, to people, to businesses, to universities, to libraries that might have information about people who might be terrorists. The PATRIOT Act requires them to turn over the information demanded, the most personal information, including health records, Internet use, upon demand, with no recourse. It is a criminal act under the PATRIOT Act for them to tell anyone else about the Government's demands, even to consult with an attorney.

Under an Executive order which President Bush signed 2 years ago, all that private-personal information remains permanently in the Government's files and can be shared with other Government agencies even after the suspect has been determined to be completely innocent.

The new PATRIOT Act, which 100 Senators unanimously supported last July, would not prevent the Federal Government from demanding that information on some 30,000 businesses, universities, and individuals every year in order to combat terrorism. It would only provide minimal legal rights of independent judicial review of those demands when some innocent person, business, library, or university believes the Federal Government has gone too far.

No one wants to prevent the Federal Government from stopping terrorists or preventing terrorist acts against the United States. We do want to prevent some people, however well intended they believe they are, from going too far. Secret torture prisons in other countries is going too far. Spying on Americans is going too far. Denying due process, even the right to consult with an attorney, for innocent Americans, is going too far.

Former Republican Congressman Robert Barr said it well:

> Enough of this business of justifying everything as necessary for the war on terror. Either the Constitution and the laws of this country mean something or they don't. It's truly frightening what is going on in this country.

Thank you, Congressman Barr.

Those in the Senate who believe the Constitution and our laws enacted under it still mean something, we are trying to get the PATRIOT Act before we make it permanent, and we deserve our right to do so. It is an inversion and a perversion of the values of this great Nation when it becomes legitimate to set up illegal torture prisons in other countries or to conduct illegal spying in this country but illegitimate for the Senate to carry out its own due process.

This Senate must not adjourn for this year until we either extend the existing PATRIOT Act or pass a new one acceptable to a broad bipartisan majority of this Senate. Anyone who prevents Members from doing one or the other is placing their personal politics ahead of the protection of the American people. That would be dangerous and destructive personal politics. That is why we must vote on a 3-month extension of the existing PATRIOT Act or a new conference report before we adjourn this year.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006—CONFERENCE REPORT—MOTION TO PROCEED

Mr. FRIST. Mr. President, I ask unanimous consent the Senate proceed to the conference report to accompany H.R. 2863, the Defense appropriations bill.

Mr. REID. I object.

Mr. FRIST. Mr. President, I move to proceed to the conference report.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mr. BURR) and the Senator from Arizona (Mr. MCCAIN).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 94, nays 1, as follows:

[Rollcall Vote No. 359 Leg.]

YEAS—94

Akaka	Dorgan	Mikulski
Alexander	Durbin	Murkowski
Allard	Ensign	Murray
Allen	Enzi	Nelson (FL)
Baucus	Feingold	Nelson (NE)
Bayh	Feinstein	Obama
Bennett	Frist	Pryor
Bingaman	Graham	Reed
Bond	Grassley	Reid
Boxer	Gregg	Roberts
Brownback	Hagel	Rockefeller
Bunning	Harkin	Salazar
Burns	Hatch	Santorum
Byrd	Hutchison	Sarbanes
Cantwell	Inhofe	Schumer
Carper	Inouye	Sessions
Chafee	Isakson	Shelby
Chambliss	Johnson	Smith
Clinton	Kennedy	Snowe
Coburn	Kerry	Specter
Cochran	Kohl	Stabenow
Coleman	Kyl	Stevens
Collins	Landrieu	Sununu
Conrad	Lautenberg	Talent
Cornyn	Leahy	Thomas
Craig	Levin	Thune
Crapo	Lieberman	Vitter
Dayton	Lincoln	Voinovich
DeMint	Lott	Warner
DeWine	Lugar	Wyden
Dole	Martinez	
Domenici	McConnell	

NAYS—1

Jeffords

NOT VOTING—5

Biden	Corzine	McCain
Burr	Dodd	

The motion was agreed to.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006—CONFERENCE REPORT

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2863) making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, Signed by a majority of the conferees on the part of both Houses.

(The conference report is printed in the RECORD in the Proceedings of the House on Sunday, December 18, 2005.)

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 2863, the Department of Defense Appropriations Act of 2006.

Bill Frist, John Cornyn, John Thune, Jeff Sessions, Lindsey Graham, Saxby Chambliss, Richard Shelby, Jon Kyl, Mike Crapo, Mitch McConnell, Ted Stevens, Thad Cochran, C.S. Bond, Conrad Burns, Pete Domenici, Judd Gregg, John Warner.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006—MOTION TO PROCEED

Mr. FRIST. Mr. President, I move to proceed to the conference report to accompany H.R. 1815, the Defense authorization bill.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mr. BURR) and the Senator from Arizona (Mr. MCCAIN).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

The PRESIDING OFFICER (Mr. MARTINEZ). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 360 Leg.]

YEAS—95

Akaka	Dorgan	McConnell
Alexander	Durbin	Mikulski
Allard	Ensign	Murkowski
Allen	Enzi	Murray
Baucus	Feingold	Nelson (FL)
Bayh	Feinstein	Nelson (NE)
Bennett	Frist	Obama
Bingaman	Graham	Pryor
Bond	Grassley	Reed
Boxer	Gregg	Reid
Brownback	Hagel	Roberts
Bunning	Harkin	Rockefeller
Burns	Hatch	Salazar
Byrd	Hutchison	Santorum
Cantwell	Inhofe	Sarbanes
Carper	Inouye	Schumer
Chafee	Isakson	Sessions
Chambliss	Jeffords	Shelby
Clinton	Johnson	Smith
Coburn	Kennedy	Snowe
Cochran	Kerry	Specter
Coleman	Kohl	Stabenow
Collins	Kyl	Stevens
Conrad	Landrieu	Sununu
Cornyn	Lautenberg	Talent
Craig	Leahy	Thomas
Crapo	Levin	Thune
Dayton	Lieberman	Vitter
DeMint	Lincoln	Voinovich
DeWine	Lott	Warner
Dole	Lugar	Wyden
Domenici	Martinez	

NOT VOTING—5

Biden	Corzine	McCain
Burr	Dodd	

The motion was agreed to.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006—CONFERENCE REPORT

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1815), to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is reprinted in the House proceedings of the RECORD of Sunday, December 18, 2005.)

The PRESIDING OFFICER. The majority leader.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the